

NOT DESIGNATED FOR PUBLICATION
DIVISION III

ARKANSAS COURT OF APPEALS

NOT DESIGNATED FOR PUBLICATION

SAM BIRD, Judge

CA05-857

MAY 10, 2006

SHARON CORNICE

APPELLANT

APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION
COURT

[NO. F313618]

V.

BAPTIST HEALTH, EMPLOYER and
CROCKETT ADJUSTMENT,
INSURANCE CARRIER

APPELLEES

AFFIRMED

This appeal arises from a decision of the Workers' Compensation Commission issued on June 8, 2005, denying Sharon Cornice's claim for an injury that allegedly occurred while she was working for Baptist Health on September 23, 2003. The administrative law judge granted Cornice's claim for reasonably necessary medical expenses, finding that "[her] diagnosed bilateral carpal tunnel syndrome was aggravated" while she was discharging her employment duties of passing out and retrieving patients' meal trays. The Commission reversed, finding instead that Cornice did not establish an aggravation of her pre-existing bilateral carpal tunnel syndrome by medical evidence supported by objective findings.

This case was heard on August 25, 2004, with Baptist Health represented by counsel before the administrative law judge and Cornice proceeding pro se. She also proceeded pro

se before the Commission when Baptist Health appealed the award. Now represented by counsel, Cornice raises two points for reversal of the Commission's decision. First, she challenges the sufficiency of the evidence to support the denial of her claim for compensable injuries to her wrists. Second, she contends that the Commission erred as a matter of law by failing to notify her of her right to be represented by an attorney, and by failing to advise her of the importance of attorney representation and of the fact that an attorney could be retained on a contingency fee basis. We affirm the Commission's denial of this claim.

1. Sufficiency of the Evidence

The testimony and medical evidence at the hearing showed that Cornice had problems with her right wrist in June 2002, which Baptist Health accepted as a compensable workers' compensation claim, and that she suffered a non-work-related stroke in November 2003. Cornice testified regarding her work as an "information associate" for Baptist, a position in which she handled charts and papers. She testified that she injured both wrists on the evening of September 23, 2003, when she attempted to help the nurses by passing out patients' meal trays, helping the patients "open their stuff," and picking up a pile of trays left from the morning. She said that she started having problems with both wrists, "real deep" in the left one, which gave her a lot of trouble. She testified that at the time of the hearing she had numbness and pain in both wrists, accompanied by shoulder pain, all the way up in her neck and both arms. She also testified that she had been in a motor vehicle accident on June 28, 2004, which resulted in "sprained muscles to her back down into her legs" but no neck

injury; she said she had not worked since then but was scheduled to return in early September 2004.

Amy Ashcraft, a registered nurse, testified that Cornice told her that she (Cornice) had hurt her wrist while passing out trays. Ashcraft could not recall why she did not require a nurse's assistant to pass out trays that evening, nor could she recall whether one or both of Cornice's wrists were injured. Barbara Hobby, supervisor of the information-associate pool, testified that passing out food trays ordinarily would not be one of Cornice's responsibilities. Hobby also testified that she received notice of Cornice's injury from Ashcraft, but Cornice herself did not report any injury to Hobby.

Cornice does not dispute the Commission's summary of the evidence as it pertains to her medical problems and work history from 1999 until Baptist Health controverted her 2003 claim for wrist injuries. We now reproduce the Commission's summary of this history:

The claimant, age 46, has a past medical history of extensive treatment for several chronic conditions, which include, psychiatric disorder, chest pain/palpitations, migraine headaches, hypertension, diabetes, diabetic peripheral neuropathy, pernicious anemia, uterine fibroid, hypercholesterolemia, abdominal pain, and bowel problems. In addition to these conditions, the medical evidence demonstrates that the claimant sustained a compensable work-related back injury on September 25, 1999, while working for the University of Arkansas for Medical Sciences (UAMS), as she attempted to lift a patient. Since this time, the claimant has had complaints of chronic back pain.

Despite the aforementioned chronic conditions, the claimant began working for the respondent on September 9, 2001, as an information associate. The claimant's job duties required her to transcribe doctors' orders and clean-sheet the charts. In order to clean-sheet the charts, the claimant was essentially required to pull every chart out of the rack, rearrange the papers and place them in the area that they belonged, compute those papers, and restock them. The claimant was also required to put the lab

work data for each patient in their chart. According to the claimant, she performed these job duties on the night shift for approximately one year.

Subsequently, in 2002, the claimant was transferred to the evening shift (3:00 p.m. until 11:00 p.m.), wherein she was required to perform these same duties. Thereafter, on or about June 21, 2002, the claimant began experiencing problems with her right wrist, which resulted from lifting patient charts. Therefore, the claimant filed a workers' compensation claim. The respondent accepted this as a compensable injury and paid for appropriate medical treatment. The respondent monitored this claim by way of its work injury case manager, Joanne Crow.

Ms. Crow referred the claimant for treatment with Dr. Edward Weber, who diagnosed the claimant with "flexor carpi radialis tendonitis." The claimant was treated conservatively with a wrist splint, intermittent heat and ice, and medication management. On September 3, 2002, Ms. Crow reported via progress notes that the claimant was doing well with no recurrent pain and that she had resumed full activities. As a result, Ms. Crow closed her case file concerning this injury.

On January 23, 2003, Dr. Kamal Patel hospitalized the claimant at Baptist Health in Little Rock due to a stroke, as she had diminished muscle strength in the right upper and lower extremities, abnormal vision in her right eye, numbness over the right side of her face, and slurred speech. In addition to these symptoms, the claimant also had experienced a prolonged menstrual cycle, which resulted in a diagnosis of iron-deficiency anemia. The claimant's condition subsequently stabilized and on January 31, 2003, she was discharged from Baptist Health.

The claimant was seen for follow-up care with Dr. Patel on February 27, 2003, at which time, Dr. Patel found the claimant to have decreased muscle strength in all of her extremities along with numbness on the right side of her mouth, lips, tongue, and gums. Therefore, the claimant had to use a cane to ambulate. The claimant also reported continued complaints of break-through bleeding.

On March 5, 2003, the claimant was seen by Dr. Willis Courtney, a neurologist, due to left subcortical infarct, complaints of bilateral hand numbness, bilateral lower extremity numbness, and neck pain. On physical examination, Dr. Courtney found the claimant to have residual right-sided weakness, and she reported decreased sensation in her fingers and toes. His impression was "left subcortical infarct, residual right-sided weakness, bilateral arm and leg numbness of unclear etiology, and neck pain." As a result, Dr. Courtney ordered an EMG to assess for seizures, a NCV of the bilateral upper and lower extremities to assess for neuropathy,

and a cervical MRI since the claimant complained of neck pain. At that time, the claimant also reported to Dr. Courtney that she was planning to undergo a hysterectomy on March 7, 2003, which was performed.

The claimant was seen by Dr. Courtney May 20, 2003 for follow-up, at which time, his impression was left thalamic stroke, which was stable; and bilateral carpal tunnel syndrome involving the sensory nerve components only, which was also stable. In addition to this, other diagnostic testing revealed degenerative disk disease of the cervical spine. However, from a neurological standpoint, Dr. Courtney released the claimant to resume her work schedule.

According to the claimant, she was off work due to her stroke beginning January 23, 2003, and she did not return to work until July of 2003. The claimant worked from this time until September 23, 2003, without any complaints or problems with her wrists, at which time, the claimant filed an employee report of accident and injury. Specifically, the claimant reported to Amy Ashcraft, the supervisor on duty, that she had sustained an injury to her wrist while passing out trays and picking up dirty trays from earlier that morning. The next day, on September 24, 2003, the work injury case manager, Caroline Heartnet reported that the claimant had a "raised area" on her left wrist, which was palpable to the nurse. She also reported that the claimant had a past history of a June 2002 injury to the right wrist, which had resulted in a diagnosis of tendonitis that had been treated and resolved by Dr. Weber. Ms. Heartnet also reported having referred the claimant back to Dr. Weber for treatment.

The claimant was seen by Dr. Weber on October 29, 2003, at which time, she reported complaints of deep throbbing pain in both wrists, for which he prescribed several medications.

In a letter dated November 10, 2003, Dr. Weber reported the following to Stella Smith, the claims adjuster:

Sharon Cornice has had nerve conduction and EMG studies performed that showed carpal tunnel syndrome. She also reports that (sic) has pernicious anemia and is on B12 supplement. She reports spinal problems that can also contribute to the numbness in her hands. She has multiple other problems as well. She does have electrodiagnostic confirmation of carpal tunnel syndrome. I have offered her a left carpal tunnel release to see if this helps her symptoms.

The Commission set forth the following rationale in denying Cornice's claim as it related to her pre-existing carpal tunnel syndrome:

In the present matter, the Full Commission finds that the claimant has failed to present any objective medical findings to support the presence of a work-related aggravation of her preexisting carpal tunnel syndrome relating to her right wrist. Thus, we note that there are no reports of swelling, spasms, contusion, or other objective findings establishing that this condition has been aggravated in her right wrist.

As to the claimant's left wrist, although the administrative law judge relied on the "objective findings" of a knot/bump that the claimant alleges arose in this area on September 23, 2003, after having passed out the patients' meal trays and retrieved the same, we do not find that there is sufficient evidence to establish a causal connection between her work on that day and the knot that arose on her left wrist. There is no opinion from a medical practitioner suggesting that this work activity is responsible for the knot, and there is no suggestion in the medical records that a medical practitioner has ever suspected such a relationship. We note the claimant's preexisting history of multiple other chronic conditions which include, but [are] not limited to, diabetes, diabetic peripheral neuropathy, pernicious anemia, hypertension, and degenerative disk disease of the cervical spine. We also note ... Dr. Weber's expert opinion in November of 2003, wherein he stated, "She reports spinal problems that can also contribute to the numbness in her hand." Hence, based on the record before us, it would require speculation and conjecture to causally link the knot that arose on the claimant's left wrist to her work activity on September 23, 2003 of passing out the patients' meal trays and retrieving the same. Speculation and conjecture cannot supply the place of proof. *Dena Construction Co. v. Herndon*, 264 Ark. 791, 575 S.W.2d 155 (1979). As a result, the Full Commission does not find that the "knot" that arose on the claimant's left wrist was an objective medical finding establishing an aggravation of her preexisting carpal tunnel syndrome in this wrist. Moreover, considering that there are no other medically documented reports of swelling, or any other objective findings establishing that this condition has been aggravated in her left wrist, we find that the claimant did not prove that she sustained an aggravation of her preexisting carpal tunnel syndrome in her left wrist by medical evidence supported by objective findings.

The Commission concluded that Cornice failed to establish by medical evidence supported by objective findings an aggravation of her pre-existing bilateral carpal tunnel syndrome, so as to give rise to a new injury in either wrist.

The employer takes the employee as he finds her, and employment circumstances that aggravate pre-existing conditions are compensable. *St. Vincent Infirmary Med. Ctr. v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). However, an aggravation is a new injury with an independent cause and, therefore, must meet the requirements for a compensable injury. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000); *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998).

The statutory definition of “compensable injury” includes the following:

An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2003). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D).

The findings of the Commission will be upheld unless there is no substantial evidence to support them. *Ark. Dep’t of Correction v. Glover*, 35 Ark. App. 32, 812 S.W.2d 692 (1991). Substantial evidence exists only if reasonable minds could have reached the same conclusion without resort to speculation or conjecture. *White Consol. Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Ark. Dep’t of Correction v. Glover, supra*.

Cornice asserts that the Commission overlooked important objective findings and substituted its own opinion for that of medical professionals, particularly Drs. Courtney and Weber. She relies upon EMG/nerve-conduction studies and the swelling in her left wrist as objective evidence of her aggravated condition. In a letter of November 10, 2003, Dr. Edward R. Weber informed appellee Crockett Adjustment, the insurance carrier for appellee Baptist Health, that electrodiagnostic testing in the form of nerve conduction and EMG studies confirmed that Cornice had carpal tunnel syndrome. Cornice does not dispute that the diagnosis of bilateral carpal tunnel syndrome was initially made in April 2003, while her claim arose from the alleged injury when she was handling trays on September 23, 2003.

We agree with Baptist Health that an aggravation must be established by “objective findings present after the alleged injury that were not present before the alleged injury.” Although the electrodiagnostic evidence confirmed the existence of Cornice’s carpal tunnel syndrome before September 23, 2003, the Commission noted the lack of any objective medical findings to support a work-related aggravation of carpal-tunnel condition in her right wrist.

The Commission also examined the compensability of Cornice’s claim with respect to her left wrist. Regarding any causal relationship between handling the trays and the knot that arose on Cornice’s left wrist on September 23, 2003, the Commission noted that no medical practitioner had suggested a causal relationship and that Dr. Weber opined in November 2003 that Cornice’s spinal problems could have contributed to the numbness in

her hand. This is sufficient evidence to support the Commission's decision that only speculation and conjecture could support a causal link between the knot and the incident of September 23. As a result of its finding that Cornice had not established proof of the causal link between the knot and the work activity, the Commission did not find the knot to be "an objective medical finding establishing an aggravation of her pre-existing carpal tunnel syndrome in this wrist." Upon considering that there were no other objective findings to show that the condition had been aggravated in her left wrist, the Commission found that Cornice did not prove an aggravation of the condition in her left wrist.

We hold that the Commission's findings constitute sufficient evidence to support its conclusion that Cornice "failed to establish by medical evidence supported by objective findings an aggravation of her pre-existing bilateral carpal tunnel syndrome." Thus, the Commission's decision displays a substantial basis for the denial of relief.

2. Notification of right to counsel

Cornice contends in her second point on appeal that the Commission must notify all injured-worker litigants of their right to retain counsel and the fact that they may retain counsel on a contingency fee basis. She also contends that litigants should be informed of the importance of legal representation and the adverse consequences of representing themselves, in light of the fact that compensation proceedings are fully adversarial and especially in facing our complex and detailed workers-compensation laws after 1993. Because this

argument was not raised to the Commission, we will not address it on appeal. *Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

Affirmed.

GLOVER and CRABTREE, JJ., agree.